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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,647	07/07/2001	Dale R. Lovercheck	ANAL-VIT	6584

7590 05/22/2008

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/22/2008

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09900647	7/7/01	LOVERCHECK, DALE R.	ANAL-VIT

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EXAMINER

San-ming Hui

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1617	20080516

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Commissioner for Patents

Applicant's amendments filed April 17, 2008 changes the scope of the claims from the method of indication for a unit dose of an orally consumable material for relief of discomfort and supplementing nutrition to method of monitoring consumption of nutritional supplementa with discomfort reliever from an enclosure having labeling indications enabling monitoring of nutritional supplement consumption. The two methods are having different functions. While the search for the two methods may have overlapping fields of search, they are not coincide at all. Searching for one method does not necessarily overlaped with the search for the other method. Subsequently, newly submitted amendments filed April 18, 2007 to the claims directed to an invention that is patentably distinct from the invention originally claimed. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-30, 33-35, 37-46, 48-55, 57-74, 76-83, 85-94 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. The response is therefore considered non-responsive. See 37 CFR 1.111.

The examiner notes that if the applicant would like to prosecute and pursue the newly amended claims, the applicant is required to file a divisional application.

Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

/San-ming Hui/
Primary Examiner, Art Unit 1617